

1 BILL NO. S-83-11-58

2 SPECIAL ORDINANCE NO. S-*Withdrawn*

3 AN ORDINANCE approving a Contract  
4 by the City of Fort Wayne by and  
5 through its Board of Public Works  
6 and McNamee, Porter & Seeley, Con-  
7 sulting Engineers, for Engineering  
8 Services in connection with Water  
9 Storage Reservoir & Pumping Facility  
10 in area of State Road #3.

11 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
12 THE CITY OF FORT WAYNE, INDIANA:

13 SECTION 1. The annexed Contract, made a part hereof,  
14 by the City of Fort Wayne by and through its Board of Public  
15 Works and McNamee, Porter & Seeley, Consulting Engineers, for  
16 Engineering Services in connection with Water Storage Reservoir &  
17 Pumping Facility in area of State Road #3, is hereby ratified  
18 and affirmed and approved in all respects. The work under said  
19 Contract requires:

20 This Contract between McNamee, Porter &  
21 Seeley, Consulting Engineers & City is in  
22 connection with construction of a ground  
23 storage water reservoir and pumping facili-  
24 ties with connecting distribution system  
25 estimated to be of 4,000,000 gallon capa-  
26 city with a 5 MGD pumping capacity and lo-  
27 cated in the area of State Road 3 between  
28 Cook Road and Ludwig Road which will serve  
29 the proposed Fort Wayne Research & Indus-  
30 trial Center;

31 the total Contract price is not to exceed One Hundred Fifteen  
32 Thousand and No/100 Dollars (\$115,000.00).

33 SECTION 2. Two (2) copies of the Contract attached  
34 hereto are on file with the City Clerk, and are available for  
public inspection.

SECTION 3. That this Ordinance shall be in full force  
and effect from and after its passage and any and all necessary  
approval by the Mayor.

*Victor Derugga*  
Councilmember

APPROVED AS TO FORM  
AND LEGALITY

*B. O. Boxberger*  
Bruce O. Boxberger, City Attorney



Read the first time in full and on motion by \_\_\_\_\_,  
seconded by \_\_\_\_\_, and duly adopted, read the second time  
by title and referred to the Committee \_\_\_\_\_ (and the City  
Plan Commission for recommendation) and Public Hearing to be held after  
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,  
Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.M., E.S.T.

DATE: \_\_\_\_\_

\_\_\_\_\_  
CITY CLERK

Read the third time in full and on motion by \_\_\_\_\_,  
seconded by \_\_\_\_\_, and duly adopted, placed on its  
passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	_____	_____	_____	_____	_____
<u>BRADBURY</u>	_____	_____	_____	_____	_____
<u>BURNS</u>	_____	_____	_____	_____	_____
<u>EISBART</u>	_____	_____	_____	_____	_____
<u>GiaQUINTA</u>	_____	_____	_____	_____	_____
<u>SCHMIDT</u>	_____	_____	_____	_____	_____
<u>SCHOMBURG</u>	_____	_____	_____	_____	_____
<u>SCRUGGS</u>	_____	_____	_____	_____	_____
<u>STIER</u>	_____	_____	_____	_____	_____
<u>TALARICO</u>	_____	_____	_____	_____	_____

DATE: \_\_\_\_\_

\_\_\_\_\_  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)  
(APPROPRIATION) ORDINANCE (RESOLUTION) NO. \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ATTEST:

(SEAL)

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of  
\_\_\_\_\_ o'clock \_\_\_\_\_.M., E.S.T.

\_\_\_\_\_  
CITY CLERK

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_.M., E.S.T.

\_\_\_\_\_  
WIN MOSES, JR. - MAYOR



73-224-2  
11/18/83

CONTRACT FOR ENGINEERING SERVICES  
BETWEEN  
THE CITY OF FORT WAYNE, INDIANA  
BY AND THROUGH ITS BOARD OF PUBLIC WORKS  
AND McNAMEE, PORTER AND SEELEY OF  
ANN ARBOR, MICHIGAN  
FOR  
WATER WORKS IMPROVEMENTS  
WATER STORAGE RESERVOIR AND PUMPING STATION

THIS IS AN AGREEMENT made as of the 18<sup>th</sup> day of November in the year Nineteen Hundred and Eighty-three by and between the City of Fort Wayne, Indiana (hereinafter called OWNER) and McNamee, Porter and Seeley, a registered co-partnership (hereinafter called ENGINEER).

OWNER and ENGINEER, in consideration of their mutual covenants, herein agree in respect to the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

SECTION 1 - BASIC SERVICES OF ENGINEER

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A. General

1. ENGINEER agrees to perform professional engineering services in connection with Project as hereinafter stated.
2. ENGINEER will serve as OWNER's professional engineering representative in all phases of Project, and will give consultation and advice to OWNER during performance of ENGINEER's services.
3. Project consists of a water storage reservoir and pumping station for the Fort Wayne Research and Industrial Center.

B. Design Phase

1. ENGINEER will conduct preliminary investigations required to define the size of the water storage reservoir and pumping station and furnish 10 copies of a preliminary engineering report, cost estimates and preliminary drawings to OWNER.
2. Upon OWNER'S approval of the Preliminary Engineering Report, the ENGINEER shall proceed with the design of the water storage reservoir and pumping station including controls and connection to the existing distribution system, and will:
  - a. Make necessary field surveys, supervise subsurface exploration and prepare detailed construction drawings, specifications and contract documents for Project approved and authorized by OWNER. These plans will be prepared in standard forms as prints from tracings. Fifty copies of the specifications



- and contract documents will be furnished to OWNER for the taking of bids, award of contracts, and the execution of construction work.
- b. Furnish to OWNER engineering data for and assist in the preparation of the required documents and assist the OWNER in securing approval of such governmental authorities as have jurisdiction over design criteria applicable to Project. All plans, specifications, and contract documents will be such as will fulfill the requirements of any State and/or Federal agency having the right of review and approval.
  - c. . Furnish a cost estimate for Project based on the completed drawings and specifications.

C. Construction Phase

When OWNER is ready to proceed with the construction phase of Project and when authorized in writing by OWNER, ENGINEER will:

1. Assist OWNER in obtaining and evaluating bids and awarding contracts for construction of Project.
2. Make periodic visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents; ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work; ENGINEER will not be responsible for the construction means, methods, techniques, sequences or procedures or the safety precautions and programs incident thereto; ENGINEER'S efforts will be directed toward providing assurance for OWNER that the completed Project will conform to the requirements of the Contract Documents, but ENGINEER will not be responsible for the failure of Contractor to perform the construction work in accordance with the Contract Documents; and during such visits and on the basis of ENGINEER'S on-site observations as an experienced and qualified design professional, ENGINEER will keep OWNER informed of the progress of the work, will endeavor to guard OWNER against defects and deficiencies in the work of Contractor and may disapprove or reject work as failing to conform to the Contract Documents.
3. Issue all instructions of OWNER to Contractor(s), issue necessary, interpretations and clarifications of the Contract Documents and in connection therewith prepare change orders as required, advise OWNER of the need to require special inspection or testing of the work.
4. Review and approve shop drawings, diagrams, illustrations, brochures, catalog data, which Contractor is required to submit, but only for conformance with the design concept of Project and compliance with the information given in the Contract Documents; and receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor in accordance with the Contract Documents.
5. Prepare progress payment certificates for the Contractor based on estimates provided by the resident engineer. If there is no resident engineer on the work, prepare the progress payment certificates in conjunction with OWNER'S representative and Contractor.



6. Revise the drawings to conform to construction records of the resident engineer or OWNER'S representative.
7. Conduct, in company with OWNER, a final inspection of Project for conformance with the design concept of Project and compliance with the information given by the Contract Documents.
8. Limited assistance in the initial start-up and test operation of the system.

D. Resident Engineer

When authorized in writing by OWNER, ENGINEER will provide resident engineering wherein ENGINEER will:

1. Provide a competent construction engineer, and inspectors, if necessary, to be resident in the area during construction of Project.
2. Stake out the contract work, and inspect labor, materials and workmanship of Project.
3. Make periodic measurements during the progress of the work and prepare progress payment estimates as a basis for partial payments to the Contractor.

## SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

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If authorized in writing by OWNER, ENGINEER will furnish or obtain from others additional services of the following types which will be paid for by OWNER as indicated hereinafter.

1. Furnishing property, boundary, and right-of-way surveys; core borings, probings or subsurface explorations; hydrographic surveys, laboratory testing and inspection of samples or materials; and other special consultation.
2. Additional services due to significant changes in general scope of Project, or its design including, but not limited to, changes in size, complexity, or character of construction.
3. Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of ENGINEER.
4. Preparing documents for alternate bids requested by OWNER for the work which is not executed.
5. Preparing detailed renderings, exhibits or scale models for Project.
6. Furnishing additional copies of reports and additional prints of drawings and specifications beyond those provided in other sections of this Agreement.
7. Investigations involving detailed consideration of operations, maintenance and overhead expenses; the preparation of rate schedules; feasibility studies,



appraisals and valuations; detailed quantity surveys of material and labor; and material audits or inventories required for certification of force account construction performed by OWNER.

8. Additional services resulting from Project involving more than one general construction contract, or separate construction contracts for different building trades, or separate equipment contracts.
9. Preparing special change orders requested by OWNER that are outside the basic scope of this contract.
10. Making an inspection of Project prior to expiration of the guarantee period and reporting observed discrepancies under guarantees provided by the construction contract.
11. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving Project.
12. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) prolongation of the construction contract time by more than sixty days, (3) acceleration of the work schedule involving services beyond normal working hours, and (4) contract default due to delinquency or insolvency.
13. Extensive assistance in the initial start-up and test operation of equipment or systems and the preparation of manuals of operation and maintenance.
14. Additional services and costs necessitated by out of town travel required of ENGINEER other than visits to Project as required by Section 1.
15. Follow-up of applications and supporting documents for governmental grants, loans or advances in connection with public work projects which require services of ENGINEER away from ENGINEER'S office.
16. Additional services in connection with Project not otherwise provided for in this Agreement.

### SECTION 3 - OWNER'S RESPONSIBILITIES

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#### OWNER will:

1. Define Project on which OWNER wishes ENGINEER to provide services and provide full information as to OWNER'S requirements for Project. Provide written authorization for each phase of Project on which ENGINEER'S services are requested.
2. Assist ENGINEER by placing at ENGINEER'S disposal all available information pertinent to the site of Project including previous reports and any other data relative to design and construction of Project.



3. Provide access for ENGINEER to enter upon public lands as required for ENGINEER to perform work under this Agreement.
4. Examine all studies, reports, sketches, specifications, drawings, proposals and other documents presented by ENGINEER and render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of ENGINEER.
5. Provide reasonable legal, accounting and insurance counseling services for Project.
6. Designate a person to act as OWNER'S representative with respect to work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define OWNER'S policies and decisions with respect to material, equipment elements and systems pertinent to the work covered by this Agreement.
7. Give prompt notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in Project.
8. Obtain approval of all governmental authorities having jurisdiction over Project and such approvals and consents from such bodies as may be necessary for completion of Project.
9. Furnish, or direct ENGINEER to provide at OWNER'S expense, necessary additional services as stipulated in Section 2 of this Agreement, or other services as required.

#### SECTION 4 - PERIOD OF SERVICE

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1. Upon written authorization from OWNER, ENGINEER will proceed diligently with the performance of the services called for in the several Sections of this Agreement.
2. Unless sooner terminated as provided herein, the Agreement shall remain in force for a period which may reasonably be required for the preparation of reports, preparation of drawings, specifications and contract documents, award of contracts, and construction of Project including extra work and any required extension thereto.
3. The services called for in Section 1.B shall be completed and the report submitted within 21 calendar days from the date of authorization to proceed. The ENGINEER will complete final plans, specifications and contract documents and submit for approval of the OWNER and State and Federal regulatory agencies within 45 calendar days from the date of authorization unless otherwise agreed to by both parties.



## SECTION 5 - PAYMENTS TO ENGINEER

### A. Payments for Basic Services of ENGINEER under Section 1

OWNER agrees to pay ENGINEER for the services as outlined herein amounts as determined hereinafter. Payments on account shall be made on invoices rendered by ENGINEER and as described below. In the event OWNER does not pay ENGINEER within three months after the date of invoice then to such unpaid invoices interest shall be added at the rate of eight percent (8%) per annum.

For Design Phase outlined in Section 1.B, a fee based on standard hourly rates as set forth below with a maximum amount not to exceed \$50,000.

For general engineering during Construction Phase under Section 1.C, a fee based on standard hourly rates as set forth below with a maximum amount not to exceed \$25,000. Payments therefor will become due and payable from month to month in proportion to payments made to construction contractors and suppliers.

OWNER agrees to pay ENGINEER for the services outlined in Section 1.E., for Resident Engineer during construction a fee based on standard hourly rates as set forth below with a maximum amount not to exceed \$40,000, including commuting and/or subsistence costs, and reimbursable expenses, as approved by OWNER.

Billing Class 9	Partner	\$ 78.00	
Billing Class 8	Department Manager	58.00	
Billing Class 7	Engineer VI	54.00	
Billing Class 6	Engineer V	49.00	
Billing Class 5	Engineer IV	43.00	
Billing Class 4	Engineer III	38.00	
Billing Class 3	Engineer II	32.00	
Billing Class 2	Technician II	26.00	
Billing Class 1	Technician I	21.00	
Transportation		0.28	per mile
Computer		26.99	per hour

Plus living costs at actual out-of-pocket expense while away from our office on account of this work. These rates are subject to revision each succeeding July 1.

### B. Payments for Additional Services of ENGINEER under Section 2

1. OWNER will pay ENGINEER for additional services performed by personnel assigned to the regularly established office of ENGINEER at standard hourly rates, plus actual cost of reimbursable expenses as defined hereinafter.
2. Payments for additional services pursuant to mutual written Agreement between OWNER and ENGINEER shall be made monthly upon presentation of ENGINEER'S detailed statement. No other additional services shall be compensable.



### C. General

1. Reimbursable expenses shall mean the actual expense of transportation and subsistence of principals and employees when traveling in connection with Project, field office expenses, toll telephone calls and telegrams, reproduction of additional reports, drawings and specifications, and similar Project-related items.
2. If this Agreement is terminated upon completion of any phase of ENGINEER'S services, the progress payments to be made in accordance with Section 5.A. constitute total payment for services rendered; if terminated during any phase of the work not due to any fault of ENGINEER, ENGINEER shall be paid for services performed during such phase to date of termination. In the event of any termination, ENGINEER shall be paid for all unpaid additional services and all unpaid reimbursable expenses, plus all termination expenses.
3. If, prior to termination of this Agreement, any work designed or specified by ENGINEER during any phase of the work is suspended in whole or in part or abandoned, not due to any fault of ENGINEER, after written notice from OWNER, ENGINEER shall be paid for services performed prior to receipt of such notice from OWNER as provided in paragraph 5.C.2., for termination during any phase of the work.

## SECTION 6 - GENERAL CONSIDERATIONS

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### A. Termination

This Agreement may be terminated by either party by not less than ten (10) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

### B. Ownership of Documents

All documents, including drawings, estimates, specifications, field notes and data are and remain the property of ENGINEER as instruments of service. OWNER shall be provided a set of record prints of the original drawings and one set of reproducible Mylar drawings conforming to construction records, in consideration of which OWNER will use them solely in connection with Project.

### C. Estimates

Since ENGINEER has no control over the cost of labor and materials, or over competitive bidding and market conditions, the estimates of construction provided for herein are to be made on the basis of ENGINEER'S experience.

### D. Successors and Assigns

OWNER and ENGINEER each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither party shall assign, sublet or transfer its interest in this Agreement without the written consent of the other.



Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

E. Independent Contractor

It is understood and agreed that ENGINEER is an independent contractor, responsible to OWNER for the results of this undertaking and is not an employee or agent of OWNER.

F. Non-Discrimination

ENGINEER and/or any associate shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Contract with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, national origin or ancestry.

ENGINEER and/or any associate shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age or sex, except where based on a bona fide occupational qualification.

G. Access

ENGINEER shall maintain and shall provide access to OWNER and the Comptroller General of the United States or their duly authorized representatives, books, records, documents and other evidence directly pertinent to the project in accordance with generally accepted accounting principles and practices for the purpose of making an audit, examination, excerpts and transcriptions.

H. Insurance

ENGINEER shall, during the term of the agreement, maintain in effect and pay all premiums for a policy of professional liability insurance protecting the ENGINEER and its employees up to an amount of not less than \$1,000,000.



IN WITNESS WHEREOF the parties have made and executed this Agreement the day and year first above written.

WITNESS:

Helma A. Morris

CITY OF FORT WAYNE, INDIANA

BY:

Win Moses, Jr.

Win Moses, Jr., Mayor

BOARD OF PUBLIC WORKS

BY:

Stephen A. Bailey

Stephen A. Bailey, Chairman

BY:

Jack Wilson, Sr.

Jack Wilson, Sr., Member

BY:

Betty R. Collins  
Betty R. Collins, Member

ATTEST FOR THE BOARD OF PUBLIC WORKS

Helen V. Gochenour  
Helen V. Gochenour, Clerk

APPROVED AS TO FORM AND LEGALITY

Almon  
ASSOCIATE CITY ATTORNEY

WITNESS:

Beverly D. Henry

McNAMEE, PORTER AND SEELEY

BY:

Philip C. Youngs  
Philip C. Youngs, Partner



BILL NO. S-83-11-58

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN  
ORDINANCE approving a Contract by the City of Fort Wayne by and  
through its Board of Public Works and McNamee, Porter & Seeley,  
Consulting Engineers, for Engineering Services in connection with  
Water Storage Reservoir & Pumping Facility in area of State Road #3

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE <sup>*Withdraw*</sup> ~~DO NOT~~ PASS.

VICTURE L. SCRUGGS, CHAIRMAN

*Victore Scruggs*

SAMUEL J. TALARICO, VICE CHAIRMAN

*Samuel J. Talarico*

DONALD J. SCHMIDT

*Donald J. Schmidt*

MARK E. GIAQUINTA

*Mark E. Giaquinta*

PAUL M. BURNS

*Paul M. Burns*

*Circled  
12-13-83*



Adm. Appr.

TITLE OF ORDINANCE Contract bet. McNamee, Porter & Seeley, Consulting Engineers, for  
services in connection with Water Storage Reservoir & Pumping  
DEPARTMENT REQUESTING ORDINANCE Board of Public Works D-83-11-58 Facility

SYNOPSIS OF ORDINANCE This contract between McNamee, Porter & Seeley, Consulting  
Engineers & City, is in connection with construction of a ground storage water reservoir  
and pumping facilities with connecting distribution system estimated to be of 4,000,000  
gallon capacity with a 5 MGD pumping capacity and located in the area of State Road 3  
between Cook Road and Ludwig Road which will serve the proposed Fort Wayne Research  
& Industrial Center.

EFFECT OF PASSAGE Improvement of water facilities to serve Ft. Wayne Research & Indus-  
trial Center

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) Total not to exceed \$115,000

ASSIGNED TO COMMITTEE